

THE HON. RICHARD A. JONES

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

COLUMBIA CASUALTY COMPANY, an
Illinois corporation,

Plaintiff,

v.

SEATTLE CHILDREN'S HEALTHCARE
SYSTEM, a Washington corporation,

Defendant,

v.

LEXINGTON INSURANCE COMPANY, a
foreign corporation; EVANSTON
INSURANCE COMPANY, a foreign
corporation; NATIONAL FIRE & MARINE
INSURANCE COMPANY, a foreign
corporation; IRONSHORE SPECIALTY
INSURANCE COMPANY, a foreign
corporation; STEADFAST INSURANCE
COMPANY, a foreign corporation;
HOMELAND INSURANCE COMPANY, a
foreign corporation; ILLINOIS UNION
INSURANCE COMPANY, a foreign
corporation,

Cross-Defendants

NO. 2:20-cv-00046-RAJ

CROSS-DEFENDANT HOMELAND
INSURANCE COMPANY OF NEW
YORK'S ANSWER AND
AFFIRMATIVE DEFENSES

CROSS-DEFENDANT HOMELAND
INSURANCE COMPANY OF NEW
YORK'S ANSWER AND AFFIRMATIVE
DEFENSES - NO. 2:20-CV-00046

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- 1 -

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1 Third-party defendant Homeland Insurance Company of New York (“Homeland”), which
 2 is incorrectly identified as Homeland Insurance Company, and improperly characterized in
 3 Defendant’s First Amended Answer, Cross-Claims, and Counterclaims as a “Cross-Defendant,”
 4 by its undersigned counsel, hereby answers the third-party claims, improperly characterized as
 5 “Cross-Claims,” of defendant and third-party plaintiff Seattle Children’s Healthcare System
 6 (“SCH”) and asserts affirmative defenses as follows:

7 **A. Introduction**

8 1. Homeland admits that plaintiff Columbia Casualty Company (“Columbia”) has
 9 asserted declaratory judgment claims against defendant SCH in this action and states that
 10 Columbia’s pleadings speak for themselves. Homeland is without knowledge or information
 11 sufficient to form a belief as to the truth of the allegation in this paragraph and therefore denies
 12 the same.

13 2. To the extent this paragraph asserts legal conclusions, no answer is required. To
 14 the extent an answer is required, Homeland lacks knowledge or information sufficient to form a
 15 belief as to the truth or accuracy of the allegations in Paragraph 2 of the Cross-Claims, and
 16 therefore denies those allegations.

17 **B. Parties**

18 3. Homeland lacks knowledge or information sufficient to form a belief as to the
 19 truth or accuracy of the allegations in Paragraph 3 of the Cross-Claims, and therefore denies
 20 those allegations.

21 4. Homeland lacks knowledge or information sufficient to form a belief as to the
 22 truth or accuracy of the allegations in Paragraph 4 of the Cross-Claims, and therefore denies
 23 those allegations.

1 5. Homeland lacks knowledge or information sufficient to form a belief as to the
2 truth or accuracy of the allegations in Paragraph 5 of the Cross-Claims, and therefore denies
3 those allegations.

4 6. Homeland lacks knowledge or information sufficient to form a belief as to the
5 truth or accuracy of the allegations in Paragraph 6 of the Cross-Claims, and therefore denies
6 those allegations.

7 7. Homeland lacks knowledge or information sufficient to form a belief as to the
8 truth or accuracy of the allegations in Paragraph 7 of the Cross-Claims, and therefore denies
9 those allegations.

10 8. Homeland lacks knowledge or information sufficient to form a belief as to the
11 truth or accuracy of the allegations in Paragraph 8 of the Cross-Claims, and therefore denies
12 those allegations.

13 9. Homeland lacks knowledge or information sufficient to form a belief as to the
14 truth or accuracy of the allegations in Paragraph 9 of the Cross-Claims, and therefore denies
15 those allegations.

16 10. Homeland admits that it is domiciled in New York, and otherwise denies the
17 allegations in Paragraph 10 of the Cross-Claims.

18 11. Homeland lacks knowledge or information sufficient to form a belief as to the
19 truth or accuracy of the allegations in Paragraph 11 of the Cross-Claims, and therefore denies
20 those allegations.

21 **C. Jurisdiction and Venue**

22 12. The allegations in Paragraph 12 of the Cross-Claims state legal conclusions to
23 which no response is required. To the extent a response is required, Homeland lacks knowledge
24 or information sufficient to form a belief as to the truth or accuracy of the allegations in
25 Paragraph 12 of the Cross-Claims, and therefore denies those allegations.

1 13. The allegations in Paragraph 13 of the Cross-Claims state legal conclusions to
 2 which no response is required. To the extent a response is required, Homeland lacks knowledge
 3 or information sufficient to form a belief as to the truth or accuracy of the allegations in
 4 Paragraph 13 of the Cross-Claims, and therefore denies those allegations.

5 14. The allegations in Paragraph 14 of the Cross-Claims state legal conclusions to
 6 which no response is required. To the extent a response is required, Homeland admits that it has
 7 conducted business in Washington, but lacks knowledge or information sufficient to form a
 8 belief as to the truth or accuracy of the remaining allegations in Paragraph 14 of the Cross-
 9 Claims, and therefore denies those allegations.

10 15. The allegations in Paragraph 15 of the Cross-Claims state legal conclusions to
 11 which no response is required. To the extent a response is required, Homeland lacks knowledge
 12 or information sufficient to form a belief as to the truth or accuracy of the allegations in
 13 Paragraph 15 of the Cross-Claims, and therefore denies those allegations.

14 16. The allegations in Paragraph 16 of the Cross-Claims state legal conclusions to
 15 which no response is required. To the extent a response is required, Homeland lacks knowledge
 16 or information sufficient to form a belief as to the truth or accuracy of the allegations in
 17 Paragraph 16 of the Cross-Claims, and therefore denies those allegations.

18 17. The allegations in Paragraph 17 of the Cross-Claims state legal conclusions to
 19 which no response is required. To the extent a response is required, Homeland lacks knowledge
 20 or information sufficient to form a belief as to the truth or accuracy of the allegations in
 21 Paragraph 17 of the Cross-Claims, and therefore denies those allegations.

22 18. The allegations in Paragraph 18 of the Cross-Claims state legal conclusions to
 23 which no response is required. To the extent a response is required, Homeland lacks knowledge
 24 or information sufficient to form a belief as to the truth or accuracy of the allegations in
 25 Paragraph 18 of the Cross-Claims, and therefore denies those allegations.

D. Factual Background

19. Homeland lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in Paragraph 19 of the Cross-Claims, and therefore denies those allegations.

20. Homeland lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in Paragraph 20 of the Cross-Claims, and therefore denies those allegations.

21. Homeland lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in Paragraph 21 of the Cross-Claims, and therefore denies those allegations.

22. Homeland lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in Paragraph 22 of the Cross-Claims, and therefore denies those allegations.

23. Homeland lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in Paragraph 23 of the Cross-Claims, and therefore denies those allegations.

24. Homeland lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in Paragraph 24 of the Cross-Claims, and therefore denies those allegations.

25. Homeland lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in Paragraph 25 of the Cross-Claims, and therefore denies those allegations.

26. Homeland lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in Paragraph 26 of the Cross-Claims, and therefore denies those allegations.

1 27. Homeland lacks knowledge or information sufficient to form a belief as to the
2 truth or accuracy of the allegations in Paragraph 27 of the Cross-Claims, and therefore denies
3 those allegations.

4 28. Homeland lacks knowledge or information sufficient to form a belief as to the
5 truth or accuracy of the allegations in Paragraph 28 of the Cross-Claims, and therefore denies
6 those allegations.

7 29. Homeland admits that it issued Policy No. MPX-0273-04 for the policy period
8 July 1, 2004 to July 1, 2005 to SCH and that the policy is excess over those provided by
9 Steadfast and Lexington for that policy period. Homeland otherwise denies the allegations in
10 Paragraph 29 of the Cross-Claims.

11 30. Homeland lacks knowledge or information sufficient to form a belief as to the
12 truth or accuracy of the allegations in Paragraph 30 of the Cross-Claims, and therefore denies
13 those allegations.

14 31. The pleadings filed by Columbia and SCH speak for themselves. Homeland
15 denies the allegations in Paragraph 31 of the Cross-Claims to the extent they are inconsistent
16 with the pleadings. Except as expressly admitted, Homeland denies the allegations in this
17 paragraph.

18 32. The allegations in Paragraph 32 of the Cross-Claims state legal conclusions to
19 which no response is required. To the extent a response is required, Homeland lacks knowledge
20 or information sufficient to form a belief as to the truth or accuracy of the allegations in
21 Paragraph 32 of the Cross-Claims, and therefore denies those allegations.

22 33. The allegations in Paragraph 33 of the Cross-Claims state legal conclusions to
23 which no response is required. To the extent a response is required, Homeland lacks knowledge
24 or information sufficient to form a belief as to the truth or accuracy of the allegations in
25 Paragraph 33 of the Cross-Claims, and therefore denies those allegations.

E. Claim for Declaratory Judgment

34. Homeland incorporates by reference its responses to the allegations in Paragraphs 1 through 33 of the Cross-Claims as if fully set forth herein.

35. The allegations in Paragraph 35 of the Cross-Claims state legal conclusions to which no response is required. To the extent a response is required, Homeland lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in Paragraph 35 of the Cross-Claims, and therefore denies those allegations.

36. The allegations in Paragraph 36 of the Cross-Claims state legal conclusions to which no response is required. To the extent a response is required, Homeland lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in Paragraph 36 of the Cross-Claims, and therefore denies those allegations.

37. The allegations in Paragraph 37 of the Cross-Claims state legal conclusions to which no response is required. To the extent a response is required, Homeland lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in Paragraph 37 of the Cross-Claims, and therefore denies those allegations.

38. The allegations in Paragraph 38 of the Cross-Claims state legal conclusions to which no response is required. To the extent a response is required, Homeland lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in Paragraph 38 of the Cross-Claims, and therefore denies those allegations.

39. Homeland denies the allegations in Paragraph 39 of the Cross-Claims as they relate to Homeland and denies that SCH has any present right to defense and/or indemnity coverage for the Aspergillus Lawsuits under any policy issued by Homeland to SCH. Homeland lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in Paragraph 39 of the Cross-Claims as they relate to parties other than Homeland, and therefore denies those allegations.

F. Need for a Stay of this Litigation

40. The allegations in Paragraph 40 of the Cross-Claims state legal conclusions to which no response is required. To the extent a response is required, Homeland lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in Paragraph 40 of the Cross-Claims, and therefore denies those allegations.

41. The allegations in Paragraph 41 of the Cross-Claims state legal conclusions to which no response is required. To the extent a response is required, Homeland lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in Paragraph 41 of the Cross-Claims, and therefore denies those allegations.

42. The allegations in Paragraph 42 of the Cross-Claims state legal conclusions to which no response is required. To the extent a response is required, Homeland lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in Paragraph 42 of the Cross-Claims, and therefore denies those allegations.

43. The allegations in Paragraph 43 of the Cross-Claims state legal conclusions to which no response is required. To the extent a response is required, Homeland lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in Paragraph 43 of the Cross-Claims, and therefore denies those allegations.

PRAYER FOR RELIEF

Homeland denies that SCH is entitled to any relief from Homeland.

AFFIRMATIVE DEFENSES

Homeland asserts the following defenses and issues without assuming any burden of proof or persuasion that would otherwise remain with SCH.

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FIRST DEFENSE

The Cross-Claims against Homeland fail to state a claim upon which relief can be granted.

SECOND DEFENSE

The Cross-Claims against Homeland are or may be barred because the requirements of underlying exhaustion have not been met with respect to any policy Homeland issued to SCH.

THIRD DEFENSE

The Cross-Claims against Homeland are or may be barred in whole or in part because the claims for which SCH seeks coverage were not first made during the policy period of any policy Homeland issued to SCH and/or arose out of occurrences that did not take place during the policy period of any policy Homeland issued to SCH.

FOURTH DEFENSE

The Cross-Claims against Homeland are or may be barred in whole or in part because the claims for which SCH seeks coverage arose out of wrongful acts or occurrences that took place before July 1, 2002 or after July 1, 2005.

FIFTH DEFENSE

The Cross-Claims against Homeland are or may be barred because any coverage that might otherwise be available is precluded by an exclusion for injury “based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving exposure to, or the manifestation, release, dispersal, seepage, migration, discharge, appearance, presence, reproduction or growth of, mold, mildew, spores, mycotoxins, fungi, organic pathogens or other micro organisms of any type, nature or description whatsoever[.]”

SIXTH DEFENSE

The Cross-Claims against Homeland are or may be barred in whole or in part to the extent that the claims for which SCH seeks coverage seek punitive, exemplary, and/or multiplied damages, and/or injunctive, declaratory, or other non-monetary relief.

SEVENTH DEFENSE

The Cross-Claims against Homeland are or may be barred in whole or in part to the extent that the claims for which SCH seeks coverage arise out of allegations that SCH committed any intentional, dishonest, fraudulent, criminal or malicious act or violated any law or statute.

EIGHTH DEFENSE

The Cross-Claims against Homeland are or may be barred because SCH did not provide Homeland with timely notice of the Aspergillus Lawsuits.

NINTH DEFENSE

The Cross-Claims against Homeland are or may be barred in whole or in part by applicable terms, exclusions, conditions and/or limitations in one or more Homeland policies or underlying policies.

TENTH DEFENSE

The Cross-Claims against Homeland are or may be barred in whole or in part by any applicable statute of limitations.

ELEVENTH DEFENSE

The Cross-Claims against Homeland are or may be barred in whole or in part by waiver, unclean hands, estoppel, and/or laches.

TWELFTH DEFENSE

The Cross-Claims against Homeland are or may be barred in whole or in part to the extent SCH seeks to recover for loss or damages that SCH failed to mitigate, minimize, or avoid.

THIRTEENTH DEFENSE

The Cross-Claims against Homeland are or may be barred in whole or in part to the extent SCH seeks to recover for loss or damages deemed uninsurable under applicable law.

FOURTEENTH DEFENSE

The Cross-Claims against Homeland are or may be barred in whole or in part to the extent that SCH failed to perform any obligation or implied obligation under any policy Homeland issued to SCH.

FIFTEENTH DEFENSE

To the extent that other insurance exists, such insurance may be obligated to respond to any and all alleged losses, and any alleged obligation of Homeland may be reduced, limited, or eliminated as a consequence.

SIXTEENTH DEFENSE

The Cross-Claims against Homeland are barred, in whole or in part, to the extent that SCH failed to disclose or misrepresented any facts that were material to the insurance of the Homeland policies.

SEVENTEENTH DEFENSE

The Cross-Claims against Homeland are barred, in whole or in part, due to SCH's failure to cooperate and respond to Homeland's requests for information concerning the Aspergillus claims.

EIGHTEENTH DEFENSE

The Cross-Claims against Homeland are barred to the extent SCH seeks coverage for payments that were unreasonable, excessive, or voluntarily made.

NINETEENTH DEFENSE

The Cross-Claims against Homeland are barred, in whole or in part, to the extent SCH impaired Homeland's right to subrogation, indemnity, or contribution.

ADDITIONAL DEFENSES

Homeland reserves the right to assert and rely upon other applicable defenses and/or issues that may become available or apparent as this matter proceeds. In addition, Homeland incorporates by reference any applicable defense asserted by the other cross-defendants in this action to the extent that such defense may inure to the benefit of Homeland.

WHEREFORE, Homeland respectfully requests that the Court:

1. Enter judgment dismissing the Cross-Claims against Homeland with prejudice;
2. Award Homeland its fees and costs in this action as permitted by law or contract;
and
3. Grant such further relief as the Court deems just and proper.

DATED this 31st day of July, 2020.

BETTS, PATTERSON & MINES, P.S.

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CERTIFICATE OF SERVICE

I, Patrick M. Paulich, hereby certify that on July 31, 2020, I electronically filed the following:

- CROSS-DEFENDANT HOMELAND INSURANCE COMPANY OF NEW YORK'S ANSWER AND AFFIRMATIVE DEFENSES, and
- Certificate of Service.

with the Court using the CM/ECF system which will send notification of such filing to all counsel of record:

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DATED this 31st day of July 2020.

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